

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE,  
YANKTON SIOUX TRIBE; ROBERT FLYING  
HAWK; OGLALA SIOUX TRIBE,

Plaintiffs,

and

CHEYENNE RIVER SIOUX TRIBE,

Plaintiff-Intervenor,

and

SARA JUMPING EAGLE, ET AL.,

Plaintiff-Intervenors,

v.

U.S. ARMY CORPS OF ENGINEERS,

Defendant-Cross  
Defendant,

and

DAKOTA ACCESS, LLC,

Defendant-Intervenor-  
Cross Claimant.

Case No. 1:16-cv-1534-JEB  
(and Consolidated Case Nos. 16-cv-1796  
and 17-cv-267)

**MOTION FOR A STAY  
IN LIGHT OF LAPSE OF APPROPRIATIONS**

The Federal Defendants in the above-captioned case hereby move for a stay of the case, including the deadlines identified in the December 12, 2018 scheduling order.

1. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The same is true for several other Executive agencies, but not the Department of Defense and defendant United States Army

Corps of Engineers (“Corps”). The Federal Defendants do not know when funding will be restored by Congress.

2. Absent an appropriation, Department of Justice attorneys are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

3. Though the Department of Defense is funded, by law Department of Justice attorneys under the direction of the Attorney General—rather than attorneys for the Corps—must conduct litigation in this case. 28 U.S.C. § 516.

4. Counsel for the Federal Defendants therefore request a stay of the above-captioned case, including the deadlines identified in the December 12, 2018 scheduling order until Congress has restored appropriations to the Department.

5. If this motion for a stay is granted, counsel for the Federal Defendants will notify the Court as soon as practicable once Congress has appropriated funds for the Department. The Federal Defendants respectfully request that the parties be directed to submit a joint (or if they cannot agree, individual) scheduling proposal within 10 business days after appropriations have been restored.

6. Defendant-Intervenor Dakota Access has authorized counsel for the Government to state that they have no objection to this motion.

7. Plaintiffs Standing Rock, Cheyenne River, Yankton, and Oglala Sioux Tribes oppose the motion and plan to file an opposition.

8. Plaintiff-Intervenors Sara Jumping Eagle, et al. oppose the motion and state:

No evidence is offered that the private party defendants are unable to maintain their defenses due to the lapse in appropriations. It would also appear that the immediate task of settling the record can be undertaken by the Corps of Engineers whose appropriation has not lapsed and remains funded. The Corps is fully engaged in this matter administratively and its own counsel can step in during the period of the partial shutdown and would have a duty to do soon in view of the public interest underlying the pipeline's continued operation. Moreover, no evidence is shown that the Department of Defense is not capable or competent to

defend the interests of the Corps with its own counsel, if necessary. Since the proposed stay is apparently indefinite, it will prejudice the plaintiffs and intervenors as it will delay settling the record and delay the filing of dispositive motions while the pipeline continues to operate.

Therefore, although we greatly regret any disruption caused to the Court and the other litigants, the Government hereby moves for a stay in this case until Department of Justice attorneys are permitted to resume their usual civil litigation functions.

Respectfully submitted this 17th day of January, 2019.

JEAN E. WILLIAMS  
Deputy Assistant Attorney General  
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U.S. Department of Justice

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**CERTIFICATE OF SERVICE**

I, Reuben S. Schiffman, hereby certify that on January 17, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and copies will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

/s/ Reuben Schiffman  
REUBEN S. SCHIFMAN